

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

CR2004-005523-001 DT

07/29/2016

HON. SHERRY K. STEPHENS

CLERK OF THE COURT  
K. Shafer  
Deputy

STATE OF ARIZONA

RYAN PATRICK GREEN  
KEVIN KIYOSHI OKANO  
JOSEPH J BRANCO

v.

JOSHUA IDLEFONSO VILLALOBOS (001)

LAWRENCE S MATTHEW  
TERRY LYNN LOVETT BUBLIK

CAPITAL CASE MANAGER

RULING

The Court has considered the Request for Hearing Regarding the Need to Restrain Joshua Villalobos with a Shock Belt During Trial filed July 1, 2016, the Maricopa County Sheriff's Response to Request for Hearing Regarding the Need to Restrain Joshua Villalobos With a Shock Belt During Trial filed July 27, 2016, the testimony presented at the evidentiary conducted on July 28, 2016, and Exhibit 1 admitted for purposes of this hearing only.

Defendant objects to the use of any restraint before the jury. Although a Defendant generally has the right to be free from restraints in the courtroom, concerns for courtroom safety and security may make the use of restraints appropriate. *State v. Cruz*, 218 Ariz. 149, 167, ¶ 118, 181 P.3d 196 (2008). The determination of whether to shackle a Defendant must be case-specific, and should reflect particular concerns related to the Defendant, including special security needs or the risk of escape. *State v. Dixon*, 226 Ariz. 545, 250 P.3d 1174 (2011); *State v. Gomez*, 211 Ariz. 494, 123 P.3d 1131 (2005).

Sergeant David Keller, Maricopa County Superior Court (MCSO), testified that he conducted a risk assessment for this defendant. For this assessment, he reviewed Defendant's current charges and the defendant's MCSO inmate classification and history.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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Defendant has been convicted of First Degree Murder and Child Abuse and faces life in prison or the death penalty at this death penalty retrial. Defendant is classified as "maximum CC" custody. He is in his cell alone. He is out of his cell only one hour each day.

Sergeant Keller testified that currently there are three means of controlling an inmate's ability and means to escape: a leg brace, an electronic restraint belt (RACC belt), and an electronic restraint vest (RACC vest). In this case, based upon his risk assessment, he recommended to the Court the defendant should be restrained with a leg brace and electronic restraint vest. The restraint vest will not be visible to the jury and is thinner and more comfortable than the restraint belt. It can easily be worn under a man's shirt and can be customized and adjusted to fit the defendant. The contact points on the vest are covered, unlike the restraint belt. To trigger the electronic restraint mechanism on the vest requires use of two buttons, not one button as is the case with the electronic restraint belt. It is his opinion, that this is the least restrictive means available to address security concerns for this defendant. If these measures are not ordered by the court, MCSO policy will require the presence of two uniformed, unarmed detention officers and one uniformed armed deputy sheriff at the back of the court gallery. If the restraints are implemented, only one unarmed detention officer is required in the courtroom. This Court's current detention officer has been with the Court for many years and has substantial recent experience in the use of restraint devices.

Defendant does not object to use of the leg brace. Defendant objects to the restraint vest because it could spontaneously activate, potentially causing Defendant's muscles to stiffen. This response could be observed by the jury. Defendant argues that the restraint vest is unnecessary in light of the following facts: Defendant has been in custody since 2004 and has never attempted to escape; Defendant has no disciplinary write-ups; Defendant is 5'2" tall and weighs 130 pounds; the belt may chill or interfere with Defendant's ability to assist counsel because he fears accidental shock by the vest.

Sargent Keller testified that in the past seven years he is unaware of any inmate suffering a loss of bladder control or any issue with a jury witnessing any accidental or spontaneous activation of the restraint belt or restraint vest. He is unaware of any spontaneous activation of the electronic restraint vest. Activation of the device by the detention officer would only occur if there is a "movement of aggression" by the defendant. Experienced officers will use their judgment to determine when activating the device would be necessary. This Court has used such restraint devices for defendants in many trials and is unaware of any activation, spontaneous or intentional, occurring in the courtroom.

SUPERIOR COURT OF ARIZONA  
MARICOPA COUNTY

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07/29/2016

The Court finds that Defendant's conviction for First Degree Murder and Child Abuse and the potential penalty he is facing (life in prison or the death penalty), his close proximity to others in the courtroom, and the entrance/exit doors raise a concern for escape. The Court finds that use of these devices is the least restrictive means of limiting Defendant's mobility and assuring Defendant does not have the opportunity to escape and is more efficient than using three law enforcement personnel to assure Defendant does not have the opportunity to escape and to assure the safety of individuals in the courtroom. The Court finds that use of the restraint vest and the leg brace is reasonable, necessary and will not be visible to the jurors.

IT IS ORDERED authorizing the use of a leg brace and electronic restraint vest at trial.